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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,294	03/01/2005	James B. Connors	877-021 US	4667
25191 BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068	7590 01/22/2008		<div>EXAMINER</div> <div>YEAGLEY, DANIEL S</div>	
			<div>ART UNIT</div> <div>3611</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>01/22/2008</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,294

Applicant(s)

CONNORS ET AL.

Examiner

DANIEL YEAGLEY

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,7-14,18-23,27 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7-10,18-23,27 and 31 is/are rejected.
- 7) ☒ Claim(s) 11-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Upon further review of the references and the claims, the indicated allowability of claims 1, 2, 4, 7 – 10 and 18 – 23 are withdrawn in view of Hall et al 6,347,688 and Jones 3,280,933. Rejections based on the cited reference(s) follow.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 21, recites the limitation of "said second fluid cell" in line 1. There is insufficient antecedent basis for this limitation in the claim; the second fluid cell was recited in dependent claim 19.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones 3,280,933.

Jones shows a brake apparatus for a wheeled vehicle having a chair actuated braking mean (figure 1), wherein the brake apparatus comprises a brake member in communication with a brake actuating member, which is in fluid communication with a seat actuation member 18 and defines a closed fluid system (figure 4), wherein actuation of the seat actuation member activates the brake actuating member which causes the brake member to move from a first position which prevents rearward motion of the wheelchair (wheeled vehicle) to a second position that allows substantially unrestricted rearward motion of the wheeled chair.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 7 – 10, 18 – 23, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al 6,347,688, in view of Jones 3,280,933.

Hall shows a wheeled vehicle (wheelchair) comprising a seat member, a wheel assembly and an automatically engageable and releasable brake apparatus attached to a rear portion of a frame (figure 2), wherein the brake apparatus comprises at least one biasing member 6, a pivot member 4 and a brake member comprising a brake shaft member and friction member (tips with friction means) that are coupled to a connection mechanism (figure 1), wherein a brake actuating member is positioned within the connection mechanism; as shown in figures 1 and 2, such that the brake member of the brake apparatus is in communication with the brake actuating member

and further shows the brake actuating member being in communication with a seat actuation member (figures 1 or 4), such that an actuation of the seat actuation member activates the brake actuating member which causes the brake member to move from a first position in substantial contact with a ground surface which prevents rearward motion of the wheelchair (figure 3) to a second position which is spaced a distance above the ground surface that allows substantially unrestricted rearward motion of the wheelchair (figure 2, column 2), but failed to show the brake actuating member of the brake apparatus being in fluid communication with the seat actuation member which defines a closed fluid system.

Jones, as stated above, discloses a seat actuated brake apparatus for a wheeled vehicle, wherein the brake apparatus is defined by a closed fluid system with a seat actuation member in communication with a brake actuating member; as claimed, wherein the seat actuation member comprises a first fluid cell with a first volume (figure 4) and the brake actuating member comprising a second fluid cell with a second volume (figure 3), wherein the first fluid cell is in fluid communication with the second fluid cell via a conduit 62 having a third volume, wherein the first and second fluid cells and the conduit define a closed fluid system and wherein a volume of fluid in the fluid system is less than a total volume of the closed fluid system, such that occupational ingress into the wheeled vehicle seat actuates the seat actuation member to cause fluid flow from a seat actuation member to a brake actuating member, which actuates the brake actuating member and causes a brake member to move from a first position to a second position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the seat actuated braking means of Hall's wheelchair with an

alternative more complex seat actuated braking means, using a fluid system and seat actuation to actuate the dead-man braking means of Hall's wheelchair braking apparatus, as suggested by the fluid seat actuated braking means of Jones, in order to provide the wheelchair brake of Hall with an increased braking torque using a fluid means to increase the braking effect of his dead-man brake apparatus, to further prevent the vehicle (wheelchair) from rolling when left unattended, as suggested by Jones fluid seat actuated braking function to actuate and hold a braking means.

Allowable Subject Matter

8. Claims 11 – 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed 10/9/07 have been fully considered but they are not fully persuasive.

Regarding claim 27, Jones clearly discloses a brake apparatus as broadly claimed; as stated above. In response to applicant's argument that the reference fails to show a wheelchair, it is noted that the feature upon which applicant relies (i.e., wheelchair) is not distinctive recited in the rejected claim.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). A recitation of the intended use of the claimed invention must

result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the motorized wheeled vehicle of Jones has a seat which is clearly capable of supporting a person and moving the person about in a seated position; henceforth a wheeled chair capable of being a wheelchair by definition.

In regards to applicant's arguments with respect to claim 31 have been considered but are moot in view of the new ground(s) of rejection. Upon further reconsideration and review of all the claims; claim 31 as well as the earlier indicted allowable claims 1, 2, 4, 7 – 10 and 18 – 23 are rejected under a new ground(s) of rejection made in view of Hall and Jones; as stated above.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Masse et al '246 shows a wheelchair with an actuated braking apparatus that contacts a ground surface.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yearly whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D.Y.

/Lesley D. Morris/
Supervisory Patent Examiner, Art Unit 3611